

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

UNITED STATES OF AMERICA

v.

GARY LENION MCDONALD

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CR 612-005-03

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O R D E R

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On July 26, 2012, Defendant Gary Lenion McDonald pleaded guilty to conspiracy to kidnap in violation of 18 U.S.C. § 1201(c). He was sentenced to serve 240 months imprisonment.

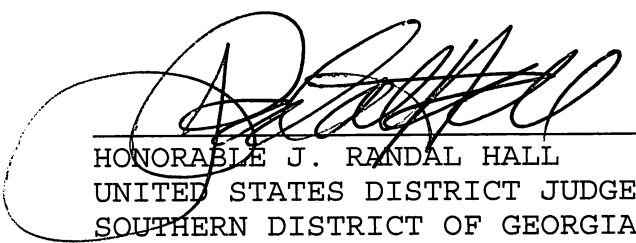
Presently, Defendant has filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) based upon the United States Sentencing Commission's "Newly Amended [U.S.S.G. §] 3B1.1." (Doc. 257, at 1.) Presumably, Defendant is referencing Amendment 794 to the United States Sentencing Guidelines, which sets out new guidelines for the determination of whether a defendant should be granted a mitigating role reduction under U.S.S.G. § 3B1.2.

Section 3582(c)(2) allows a court to modify an imposed term of imprisonment if a defendant's sentencing range has been subsequently lowered by the Sentencing Commission. However, this provision is only triggered by an amendment listed in U.S.S.G. § 1B1.10(d). ("In determining whether, and

to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) . . . is warranted, . . . the court shall substitute only the amendments listed in subsection (d) . . . and shall leave all other guideline application decisions unaffected" (emphasis added).). Amendment 794 is not a listed amendment in U.S.S.G. § 1B1.10(d).<sup>1</sup> Consequently, even assuming Defendant's conduct would otherwise qualify him for a "minor role" reduction, Amendment 794 is not available to him retroactively in the post-conviction context.

Upon the foregoing, Defendant's motion to reduce sentence (doc. 257) is **DENIED**.

**ORDER ENTERED** at Augusta, Georgia, this 20<sup>th</sup> day of September, 2016.



HONORABLE J. RANDAL HALL  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF GEORGIA

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<sup>1</sup> Indeed, the Sentencing Commission stated that Amendment 794 is intended only as a clarifying amendment. U.S.S.G. App. C, Amend. 794 (Reason for Amend.) ("This amendment provides additional guidance to sentencing courts in determining whether a mitigating role adjustment applies.").